

**BEFORE THE MONTANA STATE AUDITOR
COMMISSIONER OF SECURITIES AND INSURANCE**

In the Matter of the Proposed Agency Action
Against Justin Lloyd Dale Smidt

Case No. INS-2021-272

**FINAL AGENCY ACTION AND
DEFAULT ORDER**

On November 5, 2021, Counsel for the Commissioner of Securities and Insurance, Office of the Montana State Auditor ("CSI"), served a Notice of Proposed Agency Action and Opportunity for Hearing ("NOPAA") on Justin Lloyd Dale Smidt ("Respondent") by Certified Mail.

The NOPPA was returned to CSI as unable to deliver. CSI made another attempt via USPS certified mail tracking and the NOPPA was delivered on December 21, 2021.

A copy of the tracking receipt is attached and marked as Exhibit A. A copy of the NOPAA is attached to this Order and marked as Exhibit B. The NOPAA provided Respondent an opportunity for an administrative hearing if requested within 24 days of the date of the NOPAA. Due to the delay in receipt the CSI calendared the deadline for Respondent to request an administrative hearing to challenge the NOPAA no later than January 14, 2022 (hearing requested within 24 days of the date of the NOPPA delivery on December 21, 2021).

Respondent has failed to request an administrative hearing. The Commissioner of Securities and Insurance ("Commissioner") considered the evidence and exhibits and makes the following determinations:

FINDINGS OF FACT

1. Respondent is a resident of Montana, residing at 820 Lynch Drive, Billings, MT 59105.
2. Respondent had previously insured a 2005 Buick Rainier with Progressive Direct Insurance Company (Progressive). That policy lapsed in 2019 for nonpayment of premium.
3. On October 7, 2020, around 12:00 p.m., but in any event before 12:38 p.m., Respondent's mother, Toni Smidt, was operating the Buick in the parking lot of the Wal Mart in Billings, Montana, when she struck a 2016 Ford Fusion driven by L.D.
4. Ms. Smidt informed L.D. that she did not have the insurance information but would call him to give him the insurance policy number. She left the scene of the collision.
5. After the collision and after Ms. Smidt left, L.D. took photos of the damage to his vehicle. Those photos are time-stamped as having been taken at 12:42 p.m. on October 7, 2020.
6. On information and belief, Ms. Smidt then returned to her home, where she lived with Respondent, and informed him of the collision.
7. After being informed of the collision at 12:38 p.m., Respondent called Progressive to renew his prior insurance policy.
8. The phone call was recorded.
9. The Progressive employee asked Respondent if, in the five years preceding his call, he had any accidents, claims, or other damage to the vehicle. Respondent identified one incident from a year prior where he was rear ended.

10. The Progressive employee asked Respondent if he had any other incidents. Respondent can be heard on the call asking if he should report the collision that day, then responds to the Progressive employee, "um, that would be a no."

11. Respondent also asked the Progressive employee to add Ms. Smidt to his policy at that time.

12. The Progressive employee asked Respondent if, in the five years preceding the call, Ms. Smidt had been in any motor vehicle accidents, claims, or other damage to the vehicle. Respondent replied, "no."

13. Ms. Smidt was present during this call and supplied information to Respondent in the background of the recorded call.

14. Based on this information, Progressive initiated a policy for Respondent under policy No. 942673905, effective at 1:07 p.m. on October 7, 2020.

15. On October 20, 2020, L.D. filed a claim with Progressive for the damage to his vehicle from Ms. Smidt.

16. An investigator from Progressive contacted Ms. Smidt on October 20, 2020. She falsely stated that the collision had occurred later than 12:00 p.m. and later than the time stamp on the photos (12:42 p.m.) taken by L.D.

17. Progressive denied the claim because Respondent's insurance was not in effect at the time of the collision.

18. On May 11, 2021, an investigator from Progressive called Respondent to discuss the collision. Respondent stated that he was already on the phone with Progressive on October 7, 2020, when Ms. Smidt came home and told him she had been in an accident.

19. Respondent admitted to the investigator that he did not tell Progressive about the accident when he was asked if his Buick had been in any accidents.

20. The investigator asked Respondent why he did not report the accident to the Progressive employee when he was applying to renew his insurance policy. He responded that he did tell the Progressive employee. No such statements are on the recorded call with the Progressive employee that day.

CONCLUSIONS OF LAW

1. The Commissioner takes this action under the authority granted to him by the Montana Insurance Code (§ 33-1-101, MCA, et seq.), which authorizes the Commissioner to act in protection of insurance consumers and in the public interest.

2. A person commits the act of administrative insurance fraud under § 33-1-1202(3), MCA when the person presents or causes to be presented to an insurer a materially false application for insurance.

3. Respondent committed administrative insurance fraud when he presented a materially false application for insurance to Progressive by applying to reinstate the insurance on the Buick and falsely representing that it had not been damaged or involved in a collision that day.


ORDER

THEREFORE, based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

1. Respondent shall pay a fine of \$1,000 to The State of Montana within 30 days of the date of this Order. Payment must be made by check or money order payable to "The State of Montana."

2. The payment shall be sent to the Commissioner of Securities and Insurance,
Office of the Montana State Auditor, Attn: Tiffany Hoffman, Paralegal, 840 Helena Avenue,
Helena, MT 59601.

DATED this 24 day of January, 2022.



TROY DOWNING
Commissioner of Securities and Insurance,
Office of the Montana State Auditor

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<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ 8.10
Total P&C	
Sent To	Justin Lloyd Dale Smidt
Street a.	PO Box 50097
City, Sta	Billings, MT 59105-0097
PS Form	Instructions





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Attorneys for the Commissioner of Securities and Insurance

**BEFORE THE MONTANA STATE AUDITOR
COMMISSIONER OF SECURITIES AND INSURANCE**

In the Matter of the Proposed Agency
Action Against Justin Lloyd Dale
Smidt

Case No. INS-2021-272

**NOTICE OF PROPOSED AGENCY
ACTION AND OPPORTUNITY
FOR HEARING**

TO: Justin Lloyd Dale Smidt
820 Lynch Drive
Billings, MT 59105

The Commissioner of Securities and Insurance, Office of the Montana State Auditor, (Commissioner) has cause to believe that Justin Lloyd Dale Smidt (Respondent) has violated the Montana Insurance Code, §§ 33-1-101, *et seq.*,



MCA. The Commissioner proposes a fine of \$1,000 for administrative insurance fraud. The Commissioner has the authority to take these actions under §§ 33-1-311, 33-1-317, 33-17-1001, 33-1-1202, 33-1-1211, 33-1-1302, 2-4-631, MCA, and as more fully described below. The following is a proposed agency action.

Acceptance of CSI's proposed action will resolve this matter and it will be deemed a Final Agency Action based on the facts and law set out below. If Respondent chooses not to accept the proposed action, he may demand an administrative hearing, but that demand must be in writing and received by the Commissioner within 24 days of the date this Notice, as described in the Statement of Rights below.

FACTUAL ALLEGATIONS

1. Respondent is a resident of Montana, residing at 820 Lynch Drive, Billings, MT 59105.
2. Respondent had previously insured a 2005 Buick Rainier with Progressive Direct Insurance Company (Progressive). That policy lapsed in 2019 for nonpayment of premium.
3. On October 7, 2020, around 12:00 p.m., but in any event before 12:38 p.m., Respondent's mother, Toni Smidt, was operating the Buick in the parking lot of the Wal Mart in Billings, Montana, when she struck a 2016 Ford Fusion driven by L.D.

4. Ms. Smidt informed L.D. that she did not have the insurance information but would call him to give him the insurance policy number. She left the scene of the collision.

5. After the collision and after Ms. Smidt left, L.D. took photos of the damage to his vehicle. Those photos are time-stamped as having been taken at 12:42 p.m. on October 7, 2020.

6. On information and belief, Ms. Smidt then returned to her home, where she lived with Respondent, and informed him of the collision.

7. After being informed of the collision at 12:38 p.m., Respondent called Progressive to renew his prior insurance policy.

8. The phone call was recorded.

9. The Progressive employee asked Respondent if, in the five years preceding his call, he had any accidents, claims, or other damage to the vehicle. Respondent identified one incident from a year prior where he was rear ended.

10. The Progressive employee asked Respondent if he had any other incidents. Respondent can be heard on the call asking if he should report the collision that day, then responds to the Progressive employee, "um, that would be a no."

11. Respondent also asked the Progressive employee to add Ms. Smidt to his policy at that time.

12. The Progressive employee asked Respondent if, in the five years preceding

the call, Ms. Smidt had been in any motor vehicle accidents, claims, or other damage to the vehicle. Respondent replied, "no."

13. Ms. Smidt was present during this call and supplied information to Respondent in the background of the recorded call.

14. Based on this information, Progressive initiated a policy for Respondent under policy No. 942673905, effective at 1:07 p.m. on October 7, 2020.

15. On October 20, 2020, L.D. filed a claim with Progressive for the damage to his vehicle from Ms. Smidt.

16. An investigator from Progressive contacted Ms. Smidt on October 20, 2020. She falsely stated that the collision had occurred later than 12:00 p.m. and later than the time stamp on the photos (12:42 p.m.) taken by L.D.

17. Progressive denied the claim because Respondent's insurance was not in effect at the time of the collision.

18. On May 11, 2021, an investigator from Progressive called Respondent to discuss the collision. Respondent stated that he was already on the phone with Progressive on October 7, 2020, when Ms. Smidt came home and told him she had been in an accident.

19. Respondent admitted to the investigator that he did not tell Progressive about the accident when he was asked if his Buick had been in any accidents.

20. The investigator asked Respondent why he did not report the accident to the

Progressive employee when he was applying to renew his insurance policy. He responded that he did tell the Progressive employee. No such statements are on the recorded call with the Progressive employee that day.

ASSERTIONS OF LAW

1. The Commissioner takes this action under the authority granted to him by the Montana Insurance Code (§ 33-1-101, MCA, et seq.), which authorizes the Commissioner to act in protection of insurance consumers and in the public interest.

2. After following the procedures provided by § 33-1-701, MCA and upon a finding by the Commissioner that a violation of the Montana Insurance Code has occurred, the Commissioner may impose a fine of up to \$25,000 upon a person who violates § 33-1-1202(3), MCA. *See* § 33-1-317, MCA.

3. A person commits the act of administrative insurance fraud under § 33-1-1202(3), MCA when the person presents or causes to be presented to an insurer a materially false application for insurance.

4. Respondent committed administrative insurance fraud when he presented a materially false application for insurance to Progressive by applying to reinstate the insurance on the Buick and falsely representing that it had not been damaged or involved in a collision that day.

PROPOSED AGENCY ACTION

The Commissioner in his discretion, considering the gravity, number of offenses, and financial loss involved, and to protect the public health, safety, and welfare, and after a hearing conducted under § 33-1-701, MCA, proposes a fine of \$1,000.

STATEMENT OF RIGHTS

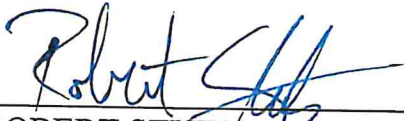
Respondent is entitled to contest the Commissioner's proposed action by requesting an administrative hearing. To do so, within 24 days of the date this Notice, Respondent must submit a hearing request in writing to Robert Stutz, 840 Helena Avenue, Helena, MT 59601 or robert.stutz@mt.gov. A hearing request may also include a response to the allegations set forth above. If a hearing is requested, Respondent will be provided notice of the time, place, and nature of the hearing. Respondent will be entitled to attend this hearing and respond and present evidence and arguments on all issues involved in this action.

Administrative hearings are conducted by an impartial hearing examiner appointed by the Commissioner under the provisions of the Montana Administrative Procedures Act. Formal proceedings may be waived pursuant to § 2-4-603, MCA. Respondent has the right to be represented by an attorney at any and all stages of this proceeding.

POSSIBILITY OF DEFAULT

Failure to timely provide a written hearing request shall result in the entry of a default order imposing the Commissioner's proposed action, without additional notice, pursuant to Montana Administrative Rule 1.3.214.

DATED: November 5, 2021.

By: 
ROBERT STUTZ, Attorney
Commissioner of Securities and Insurance

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing to be mailed to:

Justin Lloyd Dale Smidt
820 Lynch Drive
Billings, MT 59105

DATED: November 5, 2021

